Supreme Court, U.S.
FILED

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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 2002

DR. DIANA LeBRETON - PETITIONER

VS.

**PENDLETON MEMORIAL METHODIST HOSPITAL,
PATRICK C. BREAUX, M.D.,
FELIX O. RABITO, M.D., and
THOMAS A. KREFFT, M.D.**

ON PETITION FOR WRIT OF CERTIORARI TO

THE LOUISIANA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

**Dr. Diana LeBreton
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Baker, Louisiana 70714
(225) 356-3489**

QUESTIONS PRESENTED FOR REVIEW

1) Did Petitioner's father have a liberty interest under the Due Process Clause of the Fourteenth Amendment to be reasonably safe and secure from intentional euthanization at a time when he was mentally incompetent? If so, was this liberty interest a "fundamental" right?

2) Did Petitioner's father have a right to privacy under the Due Process Clause of the Fourteenth Amendment which included the right to be reasonably safe and secure from intentional euthanization at a time when he was mentally incompetent? If so, was this right to privacy a fundamental right?

3) If the hospital in which Petitioner's father was intentionally euthanized, and the doctors who euthanized Petitioner's father acted under color of law, did their actions amount to "State Action"?

4) Did the Louisiana Supreme Court deny Petitioner's right to property under the Due Process Clause of the Fourteenth Amendment when it denied Petitioner's application for writ of certiorari and/or review in the manner done?

5) Is "relatives of persons who are sick and mentally incompetent" a classification under the Equal Protection Clause of the Fourteenth Amendment? If so, is it a "suspect class"?

6. Did the actions of the Louisiana Supreme Court, in denying Petitioner's application for writ of certiorari and/or review on the basis of *res judicata* create a classification under the Equal Protection Clause of the Fourteenth Amendment? If so, is this a "suspect class"?

7. Is "sick and mentally incompetent adults whose physicians have falsified death certificates and conspired with hospitals to euthanize them" a classification under the Equal Protection Clause of the Fourteenth Amendment? If so, is this a "suspect class"?

LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page.

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[x] For cases from **state court**:

The denial of Petitioner's Application for Writ of Certiorari and/or Review to the Louisiana Fourth Circuit Court of Appeal appears at Appendix A.

The opinion of the Louisiana Fourth Circuit Court of Appeal appears at Appendix B to the petition.

JURISDICTION

[x] For cases from state courts:

The date on which the highest state court decided my case was January 31, 2003. A copy of that ruling appears at Appendix A.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. art. III, § 1
U.S. Const. amend. 14, § 1
28 U.S.C. § 1257(a)
Supreme Court Rules, Rule 10.1(c)
La. Civ. Code art. 3462
La. Rev. Stat. 40:1299.47(A)(2)(a)

STATEMENT OF THE CASE

A. Factual Background

My name is Dr. Diana LeBreton. I am a doctor of optometry and the daughter of Albert L. LeBreton, Jr. My father was admitted to Pendleton Memorial Methodist Hospital in New Orleans, Louisiana, on August 13, 1991. The diagnosis was acute myocardial infarction, with brief cessation of pulse and breathing in the ambulance en route to the hospital. He was successfully revived at the hospital and ventilated by endotracheal intubation. He was able to breath on his own after that.

Between his admission on August 13, and his death one week later, my father's condition actually improved, yet his attending physicians made the highly subjective decision to recommend the radical procedure of withdrawing all life-sustaining treatment. Our family, with the exception of myself, was persuaded by the doctors to discontinue food, hydration, antibiotic therapy, and intravenous fluids, effectively starving my father to death.

Despite being diagnosed repeatedly as "semi-comatose," rather than comatose, despite exhibiting only "moderate brain injury" on the Glascow Coma Scale, and despite showing definite neurological improvement on electroencephalographs (EEGs), the doctors nonetheless concluded that my father should be removed from life-sustaining treatment. In their subjective opinions his life would be "less meaningful" if he recovered.

In fact, on August 15, 1991, a neurologist not associated with the case opined that, based on an EEG he performed on

that date, and the fact that my father was breathing on his own and blinking his eyes spontaneously, he had improved neurologically and was responding to auditory stimuli. He had also withdrawn from a pin prick.

That same day, Dr. Thomas Krefft wrote on my father's chart that his recovery would not be "meaningful." The next day, Dr. Krefft announced that he disagreed with the other neurologist's findings. On August 17, 1991, Dr. Patrick Breaux stated that in his view the prognosis was "poor" for my father's "meaningful recovery." The next day Dr. Breaux suggested to my mother, Frances, that "any artificial means of support" should be discontinued. My mother, who was completely mentally distraught by that time, reluctantly assented; however, at the time it was not explained to her that this meant withdrawal of the feeding tube, all intravenous liquids, all hydration, and all medication (which is what the doctors meant by "artificial means of support"). She thought only the feeding tube would be removed. That same day Dr. Breaux ordered the withdrawal of all food, hydration, intravenous fluids, and medication.

The withdrawal of life-sustaining treatment created significant strife in my family. As a result, Dr. Felix Rabito, the third physician attending my father, tried to reconcile the family's differences. However, despite my repeated protests, and my mother's vacillation, Dr. Rabito refused to reinstate life-sustaining treatment. During this time frame, Dr. Breaux grew more forceful, even telling my mother that "we're all dying," in response to her question whether or not her husband was dying as a result of the doctors' actions. When my mother asked if the "I.V." could be reinserted, Dr. Breaux lied and said my father's veins could not take it.

On August 19, despite having been off life-sustaining treatment for over twenty-four hours, my father was "stable from a cardiac standpoint." Another EEG likewise revealed only "moderately sever diffuse encephalopathy." Again, despite his ostensibly improving condition, life-sustaining treatment continued to be withheld. I asked a nurse that day if she could give my father a sip of water. She replied that she could not, but that I could if I wanted to.

Albert L. LeBreton, Jr., died on August 20, 1991, at 4:00 o'clock in the afternoon. He was gasping for breath until the very end, yet the nurses were prohibited from ventilating him because of the orders of Drs. Krefft, Breaux, and Rabito. At the time those orders were given it was unlawful in Louisiana to withdraw food and water regardless of the circumstances.

Dr. Rabito advised that the cause of death was a stroke, but on the Death Certificates given to my family the cause of death had been left blank. Two weeks later three other causes of death were recorded. Six months later Dr. Rabito made a note in the hospital records that my father had been "brain dead" prior to the pronouncement of death at 4:00 p.m. on August 20; however, his EEGs had consistently reflected brain-wave activity and neurological function.

I originally filed suit before the statute of limitations (referred to as "liberative prescription" in Louisiana) for torts expired in August 1992. In that lawsuit, I alleged that Drs. Krefft, Breaux and Rabito intentionally euthanized my father by providing my mother, and my siblings incorrect information about my father's medical condition. His death has left my mother and me psychologically traumatized. Worse, however, I fear that other relatives of semi-comatose persons may lose their loved ones as a result of being similarly misinformed by

physicians bent on euthanizing those whom they subjectively determine might not have the best quality of life after recovery.

After the suit was filed, it was dismissed without prejudice, pending review by a panel of physicians, and ruling by that panel. My counsel at the time failed to reinstate the suit in a timely manner, and it was dismissed with prejudice.

I then filed another suit in state district court, based on different claims and legal theories, hoping to apply the ten-year statute of limitations for personal actions. The suit was dismissed as *res judicata*, on the basis of having already been litigated in the first suit. In order for *res judicata* to apply in Louisiana, the previous suit has to have involved identical parties and claims, and has to have been a "final judgment on the merits." But in the first suit, the trial court denied the defendants objections. The court of appeal affirmed, and then the Louisiana Supreme Court reversed. Therefore, there was never a final judgment on the merits. The trial court's ruling was interlocutory. Moreover, in the second suit I added the hospital as a defendant, and asserted different claims.

My rights, and those of my father, under the Due Process and Equal Protection clauses of the Fourteenth Amendment, have been infringed upon by the actions of Drs. Krefft, Breaux, and Rabito, and by those of Pendleton Memorial Methodist Hospital. Moreover, the state of Louisiana also infringed on those rights by ruling that the prior case was *res judicata* when the decree was interlocutory, and not final in nature.

B. Procedural Background

I filed suit on August 17, 2001, seeking damages against the doctors and the hospital where my father, Albert L. LeBreton, Jr., was treated and ultimately euthanized. Contrary to the contentions of the defendants in that case, the claims asserted in the August 2001 lawsuit were substantially different from those asserted in the first and second lawsuits.

The initial petition, filed in August 1992, sought a declaratory judgment pursuant to a state statute cited in the petition itself. That suit was interrupted by protracted Medical Review Panel proceedings, culminating in a ruling against Petitioner in August 1996, some four years after the suit was filed.

I then resurrected my suit in February 1997. The defendants objected to the suit, in the form of a "peremptory exception of prescription," claiming that the statute of limitations had run. The trial court denied the objection, and the court of appeal affirmed. The Louisiana Supreme Court reversed, and ruled that the limitations period had not been tolled, reversing Hernandez v. Lafayette Bone & Joint Clinic, 467 So.2d 113 (La.App. 3 Cir.1985), a long-standing state appellate court decision to the contrary, which had been *stare decisis*.

The 2001 lawsuit alleged that the doctors and hospital acted under color of law when treating my father, and violated his constitutional rights. It also alleged violations of the Louisiana Unfair Trade Practice Act, La. Rev. Stat. 51:1401, *et seq*. Despite the obvious differences between the two lawsuits, the Louisiana courts nonetheless held that the second suit was *res judicata*, and dismissed it.

REASONS FOR GRANTING THE PETITION

A. Substantive Due Process "Liberty" Interest

The Fourteenth Amendment states in part that no State shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. 14, §1. My father, Albert L. LeBreton, Jr., had a "liberty" interest under the Due Process clause to be reasonably safe and secure from intentional euthanization at a time when he was ill and mentally incompetent.

This Court has routinely examined our Nation's history, legal traditions, and practices, when examining due-process cases. See, e.g., Planned Parenthood v. Casey, 505 US 833, 849-850 (1992); Cruzan v. Director, Mo. Dept. of Health, 497 U.S. 261, 269-279 (1990); Moore v. East Cleveland, 431 U.S. 494, 503 (1977).

My father was at least entitled to be reasonably safe and secure while confined to the hospital, but he was denied that right by the actions of Drs. Patrick Breaux, Thomas Krefft, and Felix Rabito, who misrepresented my father's condition to us. See, e.g., Youngblood v. Romero, 457 U.S. 307 (1982). Arguably, my father also had a similar right to privacy which was infringed on by the doctors. See, e.g., Roe v. Wade, 410 U.S. 113 (1973).

My father's life was taken by Drs. Breaux, Krefft, and Rabito as surely as if they had administered a lethal dose of some drug. My father's life was taken intentionally, and these doctors conspired and were accessories to the intentional taking of his life. See, e.g., Washington v. Glucksberg, No. 96-110 (Bench Opinion) p.10, citing Commonwealth v. Bower, 13

Mass. 356 (1816), and, 3 J.Stephen, A History of the Criminal Law of England 16 (1883). In Glucksberg, Chief Justice Rehnquist wrote, at pages 10-11:

> ("The right to life and to personal security is not only sacred in the estimation of the common law, but it is inalienable"). And the prohibitions against assisting suicide never contained exceptions for those who were near death. Rather, "[t]he life of those whom life ha[d] become a burden – of those who [were] hopelessly diseased or fatally wounded – nay, even the lives of criminals condemned to death, [were] under the protection of law, equally as the lives who [were] in the full tide of life's enjoyment, and anxious to continue to live."

The Chief Justice also stated, at page 10 of the Glucksberg opinion:

> The principle that a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment may be inferred from our prior decisions.
>
> * * *
>
> Given the common law rule that forced medication was a battery, and the long legal tradition protecting the decision to refuse unwanted medical treatment, our assumption was

> entirely consistent with this nation's history and constitutional traditions.

My father responded to stimuli, and his EEG reflected significant brain wave functions before the doctors confused and coerced my mother and siblings to allow the life-sustaining treatment to be withheld from my father. See, H. Hendin, Seduced by Death: Doctors, Patients and the Dutch Cure 24-25 (1997); and American Medical Association, Code of Ethics §2.211 (1994). He should never have been euthanized.

B. Substantive Due Process?

As Chief Justice Rehnquist wrote in Glucksberg, supra, the legal basis for refusing unwanted medical treatment is based in part on the common law rule that forced medication was a battery. Ibid. Likewise, this Court has held that in addition to the specific freedoms protected by the Bill of Rights, the liberty protected by the Due Process clause of the Fourteenth Amendment includes the right to bodily integrity. See, Rochin v. California, 342 U.S. 165 (1952).

And again, in Glucksberg, supra, at page 17, the Chief Justice opined:

> Our established method of substantive-due-process analysis has two primary features: First, we have regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, "deeply rooted in this Nation's history and tradition" ... and "implicit in the concept of ordered liberty,"

> such that "neither concept of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed ...." Second, we have required in substantive-due-process cases a "careful description" of the asserted fundamental liberty interest.

Like all Americans, my father possessed a God-given, inalienable, fundamental right to be safe and secure from intentional euthanization, particularly under these circumstances. My mother and siblings were sold a "bill of goods" by Drs. Breaux, Krefft and Rabito. I do not know why they did what they did, but I am convinced that since Dr. Rabito took great pains to tamper with my father's medical file at the hospital, after six months had passed, he knew what he was doing and thus demonstrated concern that the truth might surface if I filed suit.

Finally, if my father's liberty interest – to be free and secure from euthanization during his incompetency – was violated by Drs. Breaux, Krefft, and Rabito, then the fact that they were on staff at and acted in concert with a hospital that receives federal funding, should be a sufficient nexus to permit the inference of State action. See, e.g., West v. Atkins, 487 U.S. 42 (1998); Grove City College v. Bell, 465 U.S. 55 (1984); and Reno v. Flores, 507 U.S. 292 (1993).

C. Right to Privacy

My father, Albert L. LeBreton, Jr., had a fundamental right to privacy under the Due Process Clause of the Fourteenth Amendment. This right is rooted in the common law of battery,

as discussed above. As the Chief Justice noted in Vacco v. Quill, No. 95-1858 (Bench Opinion) (1997), at page 12:

> The right to refuse life-sustaining treatment is based on common law battery. ***** "Our assumption of a right to refuse treatment was grounded not, as the Court of Appeals supposed, on the proposition that patients have a general and abstract 'right to hasten death," but on well established traditional rights to bodily integrity and freedom from unwanted touching.

D. Fundamental Right?

My father's due-process right to privacy was clearly a fundamental right. See, e.g., Bates v. Little Rock, 361 U.S. 516 (1960); Harper v. Virginia State Board of Elections, 383 U.S. 663 (1966); Shapiro v. Thompson, 394 U.S. 618 (1969); Bounds v. Smith, 430 U.S. 817 (1977); Youngblood, supra; Roe v. Wade, supra. Certainly, if the right to bodily integrity discussed in Rochin, supra, was considered a fundamental liberty interest, then the right to bodily integrity is also included as part of the right to privacy.

E. State Action

The doctors who treated my father, and the hospital in which he was treated acted under color of state law. To begin with, the hospital receives federal funding. See, e.g., Reno, supra; and Bell, supra. Further, the doctors believed they were acting under La. Rev. Stat. 40:1299, et seq. I contend that the

doctors in this case acted on the belief that state law sanctioned euthanasia, and that they were thus acting in conformity with state law. See, Dennis v. Sparks, 449 U.S. 24 (1980); and Edmonson v. Leesville Concrete Co., Inc., 500 U.S. 614 (1991). My father's death was therefore traceable to a right granted to the doctors by state law.

Moreover, the actions of the Louisiana Supreme Court, in dismissing my claim as untimely filed under the statute of limitations, denied my due-process property right to sue for damages for my father's death.

F. Equal Protection Clause Violations

Section 1 of the Fourteenth Amendment provides in part that no State shall "deny to any person within its jurisdiction the equal protection of the laws." This Court has held that the Equal Protection Clause requires states to treat like cases alike. Plyler v. Doe, 451 U.S. 202, 216 (1982).

My father represented a class of people created by state law: persons who are sick and mentally incompetent and who, as a result, are potential victims of euthanasia. See, Cruzan, supra. I also contend that the law created a second class: *relatives* of persons who are sick and mentally incompetent and are thus susceptible of being swayed by the medical profession into euthanizing their sick relatives. In either case there is, or should be, a right to proper treatment free of the coercive tactics of unscrupulous physicians. See, Levy v. Louisiana, 391 U.S. 68 (1968). And this Court has long used an actor's intent or purpose to distinguish between two acts that may have the same result. See, e.g., United States v. Bailey, 444 U.S. 394, 403-406 (1986); and Vacco, supra (Bench Opinion) at p.7.

My father's death was the result of his having been classified as a member of a class of persons whose lives would not be "reasonably meaningful" were he allowed to live. But the subjective evaluation made by Drs. Breaux, Krefft, and Rabito in this case caused not only the removal of the feeding tube, but of I.V. liquids as well as hydration. The fact that my father lingered on, breathing on his own, while he dehydrated and starved to death speaks for itself. His condition was not vegetative. He was only semi-comatose, and was reacting to neurological stimuli.

As Justice O'Connor said in Glucksberg, supra, at pages 2-3 of her concurring opinion:

> Every one of us at some point may be affected by our own or a family member's terminal illness. There is no reason to think the democratic process will not strike the proper balance between the interests of terminally ill, mentally competent individuals who would seek to end their suffering and the State's interests in protecting those who might seek to end life mistakenly or under pressure.

Thus, the State of Louisiana had an interest in protecting the classes of people I mentioned: those on life-sustaining treatment, and their relatives. Yet in this case that protection was not extended.

The Chief Justice also wrote, in Glucksberg, supra, at page 29:

> Next, the State has an interest in protecting vulnerable groups – including the poor, elderly, and disabled persons – from abuse, neglect, and mistakes. The Court of Appeals dismissed the State's concern that disadvantaged persons might be pressured into physician-assisted suicide as "ludicrous on its face." 79 F.3d, at 825. We have recognized, however, the real risk of subtle coercion and undue influence in end-of-life situations. Cruzan, 497 U.S., at 281.

In this case, my father was euthanized because of pressure exerted by doctors on my mother and siblings to assent to removing all treatment, including water, from my father, despite the fact that he was not brain dead or even comatose. Chief Justice Rehnquist went on in Glucksberg, supra, at page 30:

> The State's interest here goes beyond protecting the vulnerable from coercion; it extends to protecting disabled and terminally ill people from prejudice, neglect and inaccurate stereotypes, and "societal indifference."
>
> Finally, the State may fear that permitting assisted suicide will start it down the path to voluntary and perhaps even industry euthanasia. The Court of Appeals struck down Washington's assisted-suicide ban only as applied to competent, terminally ill adults who wish to hasten their deaths by obtaining medication prescribed by their doctors.

My father was a victim of involuntary euthanasia. He was semi-comatose, and thus mentally incompetent, which classification opened the door for the doctor to coerce my family into assenting to this euthanization.

This Court has also said that the distinction between letting a patient die and making that patient die is important, logical, rational, and well established. It comports with fundamental legal principles of causation, People v. Kevorkian, 447 Mich. 436, 470-472, 527 N.W. 2d 714, 728. cert. denied, 514 U.S. 1083, and intent. Bailey, supra; and Cruzan, supra.

In this case my father was not allowed to die, he was made to die. I contend that where a class is created by law, or results from the action of law, and involves a person's life, a "suspect" classification exists. See, Vacco, supra, (Bench Opinion) p. 4; and Romer v. Evans, 517 U.S. ____, (Slip opinion, at 10) 1996).

I also contend that the actions of the Louisiana Supreme Court, in dismissing my case as *res judicata*, created a classification under the Equal Protection Clause of the Fourteenth Amendment. The class includes all persons similarly situated, whose right to seek redress of their grievances in state court has been terminated by this ruling.

Finally, another classification created by the effects of state law includes those persons who are sick and mentally incompetent, and whose physicians have falsified death certificates and conspired with hospitals to euthanize them. See, Vacco, supra, p. 8. It is beyond cavil that such unequal treatment is not rationally or reasonably related to any legitimate state interest. Amazingly, I later learned that Dr. Krefft had a nephew who had been comatose and on life support for nine months. A police officer in Tennessee was in a coma for over

seven years before suddenly awakening. He is now reunited with his family. There are many cases of people in worse physical condition than my father not only surviving, but recovering to lead meaningful lives. I was denied the chance to help my father recover.

CONCLUSION

My mother and siblings were talked into removing all life-sustaining treatment from my father, Albert L. LeBreton, Jr., after he had been admitted to a New Orleans hospital for a heart attack. Although empirical medical data clearly indicated that he was only semi-comatose, and had significant brain and neurological function, his physicians convinced my relatives to assent to the removal not only of the feeding tube, but of all intravenous fluids, water, and antibiotics. My father was intentionally given a death sentence by the doctors who were supposed to be treating him.

My father's and my constitutional rights were violated by the actions of the doctors, acting under color of state law, and by the actions of the Louisiana Supreme Court in dismissing my case on the basis of unorthodox interpretation of two seemingly conflicting state laws. All I am asking is to have my day in court.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Dr. Diana Le Breton

Dr. Diana LeBreton, In Proper Person

Date: April 30, 2003

SUPREME COURT OF THE STATE OF LOUISIANA

2002-C-2857

DIANA LeBRETON

versus

PENDLETON MEMORIAL METHODIST HOSPITAL, PATRICK C. BREAUX, M.D., FELIX O. RABITO, M.D., AND THOMAS A. KREFFT, M.D.

In Re: LeBreton, Diana; - Plaintiff; Applying for Writ of Certiorari and/or Review, Parish of Orleans, Civil District Court Div. B, Nos. 2001-13435; to the Court of Appeal, Fourth Circuit, No. 2002-CA-0801

January 31, 2003
Denied.

JTK
PFC
CDK
BJJ
JPV
CDT
JLW

Supreme Court of Louisiana
January 31, 2003

/s/ Rai T. Daigle
Deputy Clerk of Court
for the Court

NOT DESIGNATED FOR PUBLICATION

DIANA M. LEBRETON	*** NO. 2002-CA-0801**
VERSUS	*** COURT OF APPEAL**
PENDLETON MEMORIAL METHODIST HOSPITAL, PATRICK C. BREAUX, M.D., FELIX O. RABITO, M.D., AND THOMAS A. KREFFT, M.D.	*** FOURTH CIRCUIT** ***STATE OF LOUISIANA** ***** *****

****

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2001-13435, DIVISION "B-15"
Honorable Rosemary Ledet, Judge

****

Judge David S. Gorbaty

****

(Court composed of Judge Joan Bernard Armstrong, Judge Charles R. Jones, Judge David S. Gorbaty)

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AFFIRMED

SUPREME COURT OF LOUISIANA

FOR IMMEDIATE NEWS RELEASE
NEWS RELEASE #198

FROM: CLERK OF SUPREME COURT OF LOUISIANA

On the 20th day of February, 2003, the following action was taken by the Supreme Court of Louisiana in the case listed below:

REHEARINGS DENIED:

2002-C-2857	DIANA LEBRETON V. PENDLETON MEMORIAL METHODIST HOSPITAL, PATRICK C. BREAUX, M.D., FELIX O. RABITO, M.D., AND THOMAS A. KREFFT, M.D.